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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,279	06/19/2001	Shinobu Tanaka	Q63518	1528

7590 12/24/2002

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Washington, DC 20037-3213

EXAMINER

WERNER, FRANK E

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 12/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



57 09/883279
UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER *	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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9

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on June 19, 2001

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-9 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-9 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on 6-19-01 have been approved ~~is/are objected to by the Examiner~~.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☒ received in Application No. (Series Code/Serial Number) 09/411256

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 436

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over at least claims 5-7 (and similar claims) of U.S. Patent No. 6,273,669. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to have conventionally formed the apparatus in the claimed manner depending on the intended utility of the apparatus.

3. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re at least base claims 1 and 3, no motive means to tilt the mast and lift the fork have been set forth rendering the claims incomplete; further, re claim 1, no body structure and counter[^]balance structure have been set forth, it is not understood how (and where) structurally the mast is located on the forklift; it is not understood how (and where) the fork is structurally located on the mast; moreover, re claim 3, no forklift

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structure (wheels, frame, etc.) has been set forth, it is not understood how (and where) the inferred tilting mast is structurally located and it is not understood how (and where) the fork is structurally mounted on the mast.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese Patent (,798 – cited by Applicant).

The Japanese Patent shows a load-handling apparatus for a counterbalance-type forklift 8, comprising: a tiltable operating lever 11 disposed on the body of the forklift; a mast 91 tiltable 92 in an anteroposterior direction disposed on the forklift; a liftable 91 fork 86 disposed on the mast; a switch 3 attached to said operating lever; and, a controller 1 (2, etc.) for controlling the tilting of the mast and the raising and lowering of the forks in response to inputs from the lever and the switch, wherein the lever selectively operates either the tilting of the mast or the raising and lowering of the forks as a function of whether or not the switch is activated. It would have been obvious to have conventionally formed the lever, switch and controller in the claimed manner depending on the desired operating properties of forklift.

6. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese Patent (,798) as applied to claims 3-9 above, and further in view of the Japanese Patent (,696 or ,994 – cited by Applicant).

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It would be obvious to have substituted an equivalent solenoid proportional control valve depending on the requirements of the load handling apparatus as taught by either Japanese Patent (,696 or ,994).

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

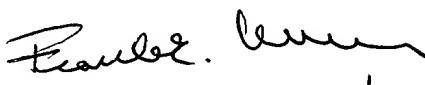
8. Any inquiry concerning this communication should be directed to F. E. Werner at telephone number (703) 308-1140.

Summary:

Claims 1-9 are rejected.

Rejection – SSP 3 mos.

Werner/kl
December 16, 2002


12/16/02
FRANK E. WERNER
PRIMARY EXAMINER
GROUP 3400-3652